



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

JUL 08 2013

Mr. John C. Hall  
Hall & Associates  
Suite 701  
1620 I Street, NW  
Washington, DC 20006-4033

FOIA Number: EPA-R3-2013-005495

Dear Mr. Hall:

The attached documents respond to your Freedom of Information Act request dated April 16, 2013 for EPA Region III records. You stated that your request "seeks any EPA Region III records, since 2008, where the Region commented on a Federal or State action (including an Order or Permit) indicating that 'blending' should be considered a bypass under 40 C.F.R. § 122.41(m) and/or no feasible alternative analysis is necessary to justify the use of blending." A hard copy of all records responsive to your request is enclosed.

Cost: \$126.00

- (X) Positive Determination (Material Enclosed).
- ( ) Requested information is not known to exist or is not in EPA's possession. (Remarks Attached).
- ( ) Your request of [date received] modified per discussion with [discussed with] (Remarks Attached)
- ( ) Fee Waiver under \$14.00
- ( ) Processing Request: Partial information included. If there is remaining information, it will be provided after next review by requester.
- ( ) Processing Request:
- (X) Please see attached bill. Make check payable to U.S. Environmental Protection Agency. Include the FOIA Number on check and mail to U.S. Environmental Protection Agency, FOIA and Miscellaneous Payments, Cincinnati Finance Center, PO Box 979078, St. Louis, MO 63197-9000.



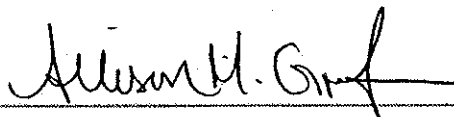
There is now an ONLINE PAYMENT option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

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Enter sfo 1.1 in the search field, open form and complete required fields.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, NW, (2822T), Washington, D.C. 20460, (U.S. Postal Service only,) FAX: (202) 566-2147, E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Ave., NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Ave., NW, Room 64161, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOI listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,



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Allison M. Graham  
NPDES Enforcement Branch  
Water Protection Division

Enclosures

cc: Heather Russel, USEPA, Cincinnati Financial Center  
Richard Van Holt, FOIA Officer (3PA00)

## Graham, Allison

**From:** Trulear, Brian  
**Sent:** Thursday, May 09, 2010 9:51 AM  
**To:** Trulear, Brian  
**Subject:** Fw: Lansdale Borough STP - PA0026182

----- Forwarded by Brian Trulear/R3/USEPA/US on 05/09/2010 09:51 AM -----

From: Francisco Cruz/R3/USEPA/US  
To: sgarg@state.pa.us, okolodij@state.pa.us  
Cc: Evelyn MacKnight/R3/USEPA/US@EPA, Brian Trulear/R3/USEPA/US@EPA  
Date: 02/23/2010 04:07 PM  
Subject: Lansdale Borough STP - PA0026182

This is to inform you that I reviewed the revised draft permit for the Lansdale Borough STP and the NPDES application. I received a copy of the NPDES application for this facility on February 16, 2010. Thank you for revising the CSO language so the draft permit is consistent with the 2008 PA's CSO policy.

The schematic diagram in the NPDES application for this facility shows various bypasses. You indicated that these bypasses are part of the CSO LTCP for this facility. Please add the following CSO bypass language specified in the 2008 PA's CSO policy:

A CSO-related bypass of the secondary treatment portion of the POTW treatment plant is authorized only when (1) the permittee is implementing Nine Minimum Controls and a Long Term Control Plan and the bypass is part of the operational plan for implementing Nine Minimum Controls and the Long Term Control Plan, (2) it is in accordance with the provision of 40 CFR 122.41 (m) and (3) the flow rate to the POTW treatment plant, as a result of a precipitation or snow-melt event, exceeds \_\_\_\_\_ MGD. (Permit writer to insert the maximum flow rate that can safely be handled by the secondary units without wash-outs based on the facility's design capacity and maximization of flow through the secondary treatment units.) Bypasses that occur when the flow at the time of the bypass is less than the above specified flow rate are not authorized under this condition.

In the event of a CSO-related bypass authorized under this condition, the permittee shall minimize the discharge of pollutants to the receiving water. At a minimum, the CSO-related bypass flows must receive primary clarification, solids and floatables removal, and disinfection. The bypass may not cause the effluent from the POTW either to exceed the effluent limits contained in its permit or to cause or contribute to a violation of water quality standards. The permittee shall report any substantial changes in the volume or character of pollutants being introduced into the POTW or that may be present in the CSO-related bypass. Authorization of CSO-related bypasses under this provision may be modified or terminated when there is a substantial change in the volume or character of pollutants being introduced to the POTW or in the bypassed flow. The permittee shall provide notice to the permitting authority of bypasses authorized under this condition within 24 hours of occurrence of the bypass.

There is one bypass to the equalization basin. Please let me know if this bypass is for essential maintenance consistent with the bypass provision.

Please let me know if you have any comments concerning the above comments.

Francisco Cruz, P.E.  
Hispanic Employment Program Advisory Council Manager  
Environmental Engineer  
NPDES Permits Branch (3WP41)  
Office of Permits and Enforcement  
Tel.: 215/814-5734  
Fax: 215/814-2302



**Graham, Allison**

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**From:** Trulear, Brian  
**Sent:** Tuesday, April 30, 2013 3:22 PM  
**To:** Trulear, Brian  
**Subject:** Fw: Bypass Issues

----- Forwarded by Brian Trulear/R3/USEPA/US on 04/30/2013 03:21 PM -----

From: Brian Trulear/R3/USEPA/US  
To: Francisco Cruz/R3/USEPA/US@EPA, Evelyn MacKnight/R3/USEPA/US@EPA, Deane Bartlett/R3/USEPA/US@EPA  
Date: 03/25/2010 02:34 PM  
Subject: Fw: Bypass Issues

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FYI

I actually talked to Ron about this and pretty much gave him our standing position about bypasses and blending. He told me that there's a facility in SW PA (Clarion ?) that is proposing Actiflo treatment on bypassed sanitary flow during wet weather and blending back to portion of the wastestream that received full treatment. SW has denied that proposal and I told him we concur and would not approve a permit that authorized this.

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Brian

----- Forwarded by Brian Trulear/R3/USEPA/US on 03/25/2010 02:28 PM -----

From: "Furlan, Ronald" <rfurlan@state.pa.us>  
To: Brian Trulear/R3/USEPA/US@EPA  
Date: 03/24/2010 08:36 AM  
Subject: FW: Bypass Issues

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We saw this BNA report concerning actions that are being taken by some EPA regions. What is EPA Region 3's position on bypassing at Sewage Treatment Plants (STP) that receive sewage from separate sanitary (SS) sewer system, STP that receives sewage from a Combined Sewer (CS) System, STP that receives sewage from a SS and CS, from separate interceptors flowing to the STP or combined into one interceptor flowing to the STP?

Ron

### **Water Pollution Municipal Wastewater Treatment Officials Seek Clear Policy on Wastewater 'Blending'**

The Environmental Protection Agency is objecting to state permits that allow water utilities to avoid fully treating wastewater during heavy rains, a move utility officials and state regulators say is based on proposed guidance from 2005 that was never made final.

The agency's position appears to be a reinterpretation of previous informal policies and could force water utilities to undertake expensive fixes, such as expanding treatment systems, the National Association of



Clean Water Agencies said.

Chris Hornback, NACWA senior director of regulatory affairs, told BNA that EPA's failure to finalize an official policy on blending partially treated and fully treated wastewater before it is discharged into water supplies is causing confusion for wastewater treatment plants and could impose huge costs on municipalities already struggling to upgrade aging infrastructure.

Officials with NACWA, which represents publicly owned treatment works, or POTWs, met with EPA Assistant Administrator for Water Peter Silva Feb. 19 to call for an official written policy on wastewater blending. NACWA also discussed its concern with what it considers an overall lack of regulation and clarity on a policy for overflows from sanitary sewers, which are designed to handle wastewater. The agency has had in place for several years a published policy for combined sanitary sewers, which handle wastewater and stormwater.

### **EPA Considering Options**

"EPA understands it needs to do something and is considering options now likely to be made at the administrative level," Hornback said.

EPA spokeswoman Enesta Jones told BNA, "The agency is still meeting internally on this issue, and no decision has yet been made."

At issue is the question of whether and under what circumstances treatment plants can allow wastewater to bypass the normal secondary stage of treatment, which typically uses biological methods, including bacteria, to treat the wastewater after the water has gone through primary treatment, which physically screens and separates biosolids.

This is a critical issue for the utilities, which contend that during heavy rains, treatment systems become inundated and are unable to handle the higher flow volume. In those cases, the plants want to divert some of the partially treated wastewater around the secondary treatment stage and blend the partially and fully treated water during discharge from the plant.

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### **Proposed Policy Issued in 2005**

EPA in 2005 released a proposed single sanitary sewer system "peak water flows" policy and guidance document, commonly referred to as the "blending" policy. After a comment period, it was sent to the White House Office of Management and Budget for review, but it was never approved or issued as final policy (70 Fed. Reg. 76,013, 12/22/05; (243 DEN, A-6, 12/20/05).

This proposal interpreted the Clean Water Act's 1979 "bypass" rule for sanitary sewers to clarify that the regulation would apply in all instances to wet weather diversions at publicly owned treatment plants serving separate sanitary sewers. A bypass is an "intentional diversion of waste streams from any portion of a treatment facility."

According to Jones, the rule prohibits bypasses except where necessary for essential maintenance to assure efficient operation. For all other bypasses, the director of the National Pollutant Discharge Elimination System program may take enforcement action against a permittee for a bypass, unless:

- the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- there were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime; and
- the permittee submitted the notices required by the regulation.

An anticipated bypass may be approved after considering its adverse effects if it meets these criteria, Jones said.

Essentially, the 2005 proposal said blending was considered a bypass and thus subject to the original rule's requirements that an "anticipated bypass" be approved only if there were "no feasible alternatives" to peak wet weather flow diversions around secondary treatment units, using an analysis set forth in the guidance.

The analyses and alternatives such as constructing additional treatment facilities are very costly, Hornback said. If they are now required, as EPA seems to indicate, it should be spelled out in writing in EPA final policy, he said.

### **Agency Objecting to Permits**

He said states and EPA regions have abided by a patchwork of practices on blending for years without a final policy.

However, some regions, particularly Regions 7 and 10, recently have objected to state-issued permits they say may violate EPA's bypass rule and have requested more information and possible additional treatment. It appears EPA now is generally interpreting requirements to incorporate the "no feasible alternatives" provision in the 2005 proposal, according to Hornback.

Although a permit has not yet been overturned, Hornback said municipalities are concerned because they are reluctant to spend large sums of money on additional assessments and treatment without a final

policy when the agency may put in place a different policy in the future.

The 1979 bypass rule has a provision indicating bypasses are allowed only if there are no feasible alternatives, but the rule does not mention peak wet weather flows. The rule states, "The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation."

Hornback said the bypass rule, which EPA has referred to in recent policy discussions, was never meant to address peak wet weather flows but rather to allow a wastewater treatment to bypass, that is, blend, only for maintenance or emergencies.

In its 2005 proposed policy, EPA explicitly applied the bypass rule to wet weather events. The agency said its proposed policy "provides the agency's interpretation that the 40 C.F.R. 122.41(m), the bypass regulation, applies to peak wet weather diversions at POTW treatment plants serving separate sanitary sewer conveyance systems that are recombined with flow from the secondary treatment units."

Kris Lancaster, a spokesman for Region 7, told BNA in an e-mail, the region considers peak flow blending as a form of a bypass because it is a diversion of flows around a portion of a treatment plant.

"The region has taken the position that permits must meet the requirements of the bypass rules including a demonstration that there are 'no feasible alternatives' to the bypass," Lancaster said.

### **'Significant Change' in Interpretation**

Hornback called this position "a significant change in interpretation. It's huge."

For decades, "utilities have been permitted to allow for blending. We need an articulation in a final statement," he said.

The 2005 proposed policy and guidance significantly differed from a 2003 proposed policy, which would have allowed blending if certain criteria were met. The 2003 proposed policy said blending was not considered a bypass under the rule.

The 2003 proposal drew 98,000 comments, mostly negative, which expressed concern over potential human health risks if raw sewage wound up in the nation's waterways. It was subsequently withdrawn.

The 2005 proposed policy was the result of months of negotiations between NACWA and the Natural Resources Defense Council, which jointly helped develop the document.

### **Issue Called Long-Standing**

Linda Eichmiller, executive director of the Association of State and Interstate Water Pollution Control Officials, told BNA the issue of whether blending can be allowed in state permits is a long-standing one, but it appears to have flared up.

She said it appears some states or localities think they have more flexibility than EPA now thinks they do. "[EPA] never finalized the policy," she said.

An example of this disconnect is a situation in Lawrence, Kan.

In May and December 2008, EPA Region 7 issued interim objections to draft permits for a sewage treatment plant for the city. In its objections, EPA said it considered the diversion around the city's secondary biological treatment units to a chemical treatment unit called a "ballasted flocculation unit" to be a prohibited bypass. EPA said the effluent from the unit did not meet the minimum requirements for secondary treatment.

As part of the objection, EPA also requested an evaluation of whether alternatives to the wet weather diversions around the secondary treatment unit to the ballasted flocculation unit are feasible.

Mike Tate, chief of technical services for the Kansas Department of Health and Environment, told BNA the city installed the additional unit at a cost of \$3 million to replace an extraneous flow lagoon.

### **Kansas Files Appeal**

Tate said the state has appealed the objection and continues to treat its wastewater in a way it contends does not constitute a bypass under the rule. But the issue has not yet been resolved. The wastewater has consistently met safe water treatment requirements, Tate said, noting the unit was installed prior to EPA's proposed 2005 policy.

The Kansas Department of Health and Environment eventually got the attention of Sen. Pat Roberts (R-Kan.), who questioned EPA on the matter.

Responding to Roberts, EPA's Silva in an October 2009 letter commended Lawrence on its initiative to install additional treatment and said EPA is available "to provide advice and technical assistance to Lawrence as they evaluate the feasibility of alternatives to the bypass."

An attachment to Silva's letter to the senator said, "Although the 2005 policy has not been finalized, it remains a viable path forward for utilities to meet their obligations under the bypass regulation."

### **Nebraska Wants Formal Policy**

Steve Goans, who handles water permitting for the state of Nebraska, also in Region 7, said Nebraska officials have never had an issue with wastewater treatment blending. The state does not allow it, he said.





Graham, Allison

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**From:** Trulear, Brian  
**Sent:** Tuesday, April 30, 2013 3:38 PM  
**To:** Trulear, Brian  
**Subject:** Fw: Chalfont New Britain STP, PA0025917

----- Forwarded by Brian Trulear/R3/USEPA/US on 04/30/2013 03:37 PM -----

From: Francisco Cruz/R3/USEPA/US  
To: sgarg@state.pa.us, okolodij@state.pa.us  
Cc: Evelyn MacKnight/R3/USEPA/US@EPA, Deane Bartlett/R3/USEPA/US@EPA, Lisa Trakis/R3/USEPA/US, Angela McFadden/R3/USEPA/US@EPA, Brian Trulear/R3/USEPA/US@EPA, Robert Campbell/R3/USEPA/US@EPA  
Date: 08/17/2009 01:35 PM  
Subject: Chalfont New Britain STP, PA0025917

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According to our Memorandum of Agreement, the Environmental Protection Agency (EPA) Region III has reviewed the draft National Pollutant Discharge Elimination System (NPDES) permit for the Chalfont New Britain STP, PA0025917, that we received from your office on June 3, 2009. Based on my review of the draft permit, water quality protection report and the NPDES permit application, I offer the following comments for your consideration and action.

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Part C.I.12 of the draft permit, High Flow Maintenance Plan, approves bypasses for flow in excess of the hydraulic capacity of the wastewater treatment. Bypasses are prohibited and the permittee may be subject to an enforcement action, unless the permittee satisfies the three conditions listed in 40 CFR Section 122.41(m)(4)(i) and reflected in Part B.I.F.2.a to c of the draft permit, on a case-by-case basis. As agreed in our August 13, 2009 conference call, this condition must be removed from the draft permit.

The following SSO boilerplate language, developed by your office must also be included in the permit:

"Unless otherwise authorized under Part B of this permit, any discharges from any point other than a permitted treatment outfall or permitted combined sewer system outfall is prohibited. See e.g. Section 301(b)(1)(B) and (C) of the Clean water Act; 40 CFR Sections 122.44 and 133.102 (relating to limitations, standards and permit conditions; and secondary treatment). In the event there is a prohibited discharge from a sewer conveyance system, report every such discharge to the Department within 24 hours of the discharge and on your monthly Discharge Monitoring Report (DMR) in the remarks block. Indicate the date of discharge, action taken and volume of discharge. See 40 CFR Section 122.41(l)(6) and (7), relating to reporting requirements."

The draft permit contains nitrate and nitrite numeric effluent limits to protect the drinking water intake for the Aqua Pennsylvania facility. We suggest that the draft permit for Chalfont New Britain STP should be revised to require the permittee to notify the operator of the Aqua Pennsylvania Drinking Water facility in the case of an oil spill, release of a toxic or noxious substance, or an irregularity or upset in the wastewater treatment process or effluent quality that could adversely affect the quality of the water at the point of the intake of downstream water supply. This condition will allow the operator of the drinking water treatment plant to take actions to address any intake water contamination incidents.

This permit should not be reissued until PADEP addresses the above comments.

If you have any question concerning this matter, please call me at 215/814-5734.

Francisco Cruz, P.E.  
Hispanic Employment Program Advisory Council Manager  
Environmental Engineer  
NPDES Permits Branch (3WP41)  
Office of Permits and Enforcement  
Tel.: 215/814-5734  
Fax: 215/814-2302

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**FREEDOM OF INFORMATION ACT REQUEST INVOICE**

TO: Mr. John C. Hall  
Hall & Associates, Suite 701  
1620 I Street, NW  
Washington, DC 20006-4033

| RIN No:            | Invoice Date | Amount Due       |           |
|--------------------|--------------|------------------|-----------|
| EPA-R3-2013-005495 | 07-08-2013   | \$               | 126.00    |
|                    |              | Interest         |           |
|                    |              | Handling         |           |
|                    |              | Penalty          |           |
|                    |              | <b>Total Due</b> | \$ 126.00 |

**Remarks:**

Professional Personnel Time: 4.5 hours @ \$28.00 per hour = \$126.00

**Commercial Fee Category**

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| <b>DUE DATE:</b>        | August 08, 2013  |
| <b>Send Payment to:</b> | U. S. Environmental Protection Agency - Region III<br>FOIA and Miscellaneous Payments – Cincinnati Finance Center<br>P.O. Box 979078<br>St. Louis, MO 63197-9000 |

**PLEASE INCLUDE RIN NO. ABOVE ON THE FACE OF YOUR CHECK.** Payment must be received within 30 days of the invoice date. If not received, interest will accrue from the invoice date, at the rate of 3% per annum, through the date of the payment. A late payment handling charge of \$15.00 will be imposed after 30 days, with an additional charge of \$15.00 for each subsequent 30 day period. A 6% per annum penalty will be assessed on any principal amount not paid within 90 days of the due date.

Direct any billing inquiries to Ms. Heather Russell (513) 487-2044. If you have any questions about this response, please contact Ms. Allison Graham at 215-814-2373.

cc: Richard Van Holt, FOIA Officer (3PA00)  
Bryson Lehman, USEPA, Cincinnati Financial Center

*Customer Service Hotline: 1-800-438-2474*

